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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,309	08/28/2006	Hans Gygax	30887/04002	2653

24024 7590 04/02/2009  
CALFEE HALTER & GRISWOLD, LLP  
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CLEVELAND, OH 44114

EXAMINER
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O'HARA, BRIAN M

ART UNIT	PAPER NUMBER
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3644

NOTIFICATION DATE	DELIVERY MODE
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04/02/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@calfee.com  
dcunin@calfee.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/554,309	GYGAX, HANS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian M. O'Hara	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/23/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "that means with a maximum take-off weight (Maximally take-off Weight MTOW) each of 452.5kg to 590kg according to regulation" renders the claim indefinite. It is unclear if the MTOW is being claimed as the aircraft weight, or if this is just an explanation. Similarly, the phrase "the cabin is so large that a virtual flat cabin floor is defined in it" renders the claim indefinite because it is unclear if the virtual flat cabin floor is being claimed as part of the aircraft, or if the cabin is merely large enough to fit a floor inside.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over applicant's admitted prior art on Pages 1-3 of the specification in view of Fronk (US Patent 4,483,499 A). Applicant discloses a ultra light aeroplane (IKARUS C42) comprising: an engine arranged at the nose with tractor propellers, cabin cell arranged behind and being wide enough for two adjacent passenger seats (See Page 2, lines 1-9), the cabin space allowing the reception of a person lying on a stretcher (Page 3, "IKARUS C42 has a passenger cell that is sufficiently large enough to transport in it a person lying down").

6. If applicant feels that the cabin of the IKARUS C42 is not sufficiently large to accommodate a person lying on a stretcher, Fronk teaches an aircraft cabin for a light aircraft with a flat floor which is at least 190 cm in length, 45cm wide, and 40cm in height that allows the reception of a person lying on a stretcher (See Fig. 3). Fronk shows a cabin with room for at least two stretchers and seating to the side of the stretchers. At the time of invention, it would have been obvious to one of ordinary skill in the art, to provide the light aircraft of Applicant's admitted prior art with a cabin sized for a stretcher in view of the teaching of Fronk. The motivation for doing so would have been to enable a person to sleep in the aircraft.

7. Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art on Pages 1-3 and Fronk as applied to claim 1 above, and further in view of [www.comco-ikarus.de/](http://www.comco-ikarus.de/) (2003).

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8. Along with the web page dated 2003, an English translation with figure numbers added for purposes of discussion is provided. The English translation is referred to throughout the remainder of the rejection below.

9. Applicant's admitted prior art states that "the ultralight or ecolight aeroplane presented here is designed using a conventional construction" (Page 1, Lines 14-16) and "Ultralight or ecolight aeroplanes with this basic construction are already known" (Page 1, Line 20). These above two statements including a review of the [www.comco-ikarus.de/](http://www.comco-ikarus.de/) reference reveals that the IKARUS C42 has the same design including the same elements as listed in claims 2-10 as the current invention with the exception that the current invention is sized up for the new supported MTOW and provided with a virtual flat floor.

10. More specifically, applicants admitted prior art describes the IKARUS C42 with a central tube (Page 2, Line 2), a tube-grate frame (Page 2, Lines 5-6), synthetic panels which determine the aesthetic appearance of the aeroplane (page 2, Lines 11-16), and wing bracings (Page 2, Line 8).

11. [www.comco-ikarus.de/](http://www.comco-ikarus.de/) teaches an ultra light airplane with gable shaped arranged shock strut tubes (See Fig. 3), a U-shaped profile (Fig. 3 shows round fuselage immediately behind the wing), a square shaped profile (Portion under wing, See Fig. 3), doors that are fixed above (See Fig. 5), carbon fiber fairings (Page 2), a 100 liter fuel tank (Page 1 50+50 liter tank), welded tube construction with thread sleeves (Page 2, fittings and screws made of stainless steel or high strength standard elements), and towing of a glider (See Fig. 4).

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12. In view of applicant's disclosure concerning the construction of the aircraft, and the technical specifications available on [www.comco-ikarus.de/](http://www.comco-ikarus.de/), it would have been obvious to one of ordinary skill in the art to provide the large cabin ultralight aircraft of the applicant's admitted prior art and Fronk as described above, with the design elements of the IKARUS C42 as taught by [www.comco-ikarus.de/](http://www.comco-ikarus.de/). The motivation for doing so would have been to provide a larger cabin aircraft that is also light in weight to conserve fuel.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kopylov and Moss references teach light aircraft with a central tube construction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian M. O'Hara whose telephone number is (571)270-5224. The examiner can normally be reached on Monday thru Friday 10am - 5pm except the first Friday of every Bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy D. Collins/  
Primary Examiner, Art Unit 3643  
For Michael Mansen

/B. M. O./  
Examiner, Art Unit 3644